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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

DENNIS FISHER,

Defendant and Appellant.

A147778

(City & County of San Francisco
Super. Ct. No. SCN204635)

Appellant Dennis Fisher, who was placed on probation by the trial court, claims in this appeal that the trial court's oral pronouncement of the terms of his probation conflicts with the court's minutes and written probation order. We hold the oral pronouncement is controlling and remand so that the trial court may correct the minutes and the written probation order accordingly.

I. BACKGROUND

On March 12, 2008, Fisher was charged by information with embezzlement (Pen. Code, § 503) and grand theft (Pen. Code, § 487, subd. (a)).¹ As to both counts, the information alleged the loss exceeded \$150,000 (Pen. Code, § 12022.6, former subd. (a)(2)). In October 2015, the prosecutor orally amended the information to include a count alleging insurance fraud (Pen. Code, § 550, subd. (b)(1)). Fisher pleaded guilty to insurance fraud and admitted the excessive taking enhancement, and the remaining counts were dismissed.

¹ Fisher's codefendant, Colleen Moore, was charged with grand theft and with possession of stolen property (Pen. Code, § 496, subd. (a)).

The trial court suspended imposition of sentence and placed Fisher on five years of supervised probation with the condition he serve 180 days in county jail. The court ordered Fisher to pay fines, fees, and \$150,000 in restitution. At sentencing, the court announced that Fisher might be required to pay costs associated with the order of probation (a presentence report and a monthly supervision cost), but stated the payment of those costs was not a condition of his probation.

Despite this announcement, the clerk's minutes state that the payment of costs is a condition of probation. A written probation order similarly states these costs are conditions of probation.

Fisher appealed. In his initial notice of appeal, Fisher stated he sought to present "constitutional" arguments based on alleged discovery abuses. The trial court denied Fisher's request for a certificate of probable cause (CPC), and the clerk notified Fisher his appeal was inoperative. (See Pen. Code, § 1237.5; Cal. Rules of Court, rule 8.304(b).)

II. DISCUSSION

As a threshold matter, we must address whether Fisher's appeal is operative. (See Cal. Rules of Court, rule 8.304(b).) In an amended notice of appeal, Fisher stated his appeal was based on (1) "the sentence or other matters occurring after the plea that do not affect the validity of the plea," and (2) "constitutional" arguments based on alleged discovery abuses. In connection with the latter ground, Fisher filed a request for a CPC, which the trial court denied. The clerk again informed Fisher his appeal was inoperative, but processed the appeal as "active" after the First District Appellate Project notified the clerk the appeal could proceed as to sentencing issues. We conclude the appeal is operative. Fisher may proceed with his appeal as to the issue he raises concerning the court's probation order, since it is a post-plea matter that does not affect the validity of the plea. (Cal. Rules of Court, rule 8.304(b)(4)–(5).)

Fisher contends the trial court erred by incorrectly requiring that he pay the costs of his probation as a condition of probation, despite the trial court orally conveying that the costs would not be such a condition. He requests the case be remanded so the trial

court's minutes and the written probation order may be corrected to reflect that payment is not a condition of his probation. The People agree with Fisher and concede the matter. We also agree. A trial court's oral pronouncement of the judgment is controlling, while a court's minutes merely reflect the judgment. (See *People v. Mitchell* (2001) 26 Cal.4th 181, 185.) Moreover, payment of probation costs cannot be made a condition of probation. (See Pen. Code, § 1203.1b, subd. (d); *People v. Washington* (2002) 100 Cal.App.4th 590, 592; *People v. Hart* (1998) 65 Cal.App.4th 902, 906–907.)

III. DISPOSITION

The case is remanded to the trial court with directions to correct the minutes and the probation order to reflect that payment of probation costs (the cost of the presentence report and the monthly supervision cost) is not a condition of Fisher's probation.

Streeter, J.

We concur:

Reardon, Acting P.J.

Rivera, J.